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Appendix III - Tobacco Settlement Summary

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The following summary of the tobacco settlement between the states and tobacco industry was obtained from the National Association of Attorney Generals website (visited Nov. 25, 1998) <http://www.naag.org>. This site also includes the settlement agreement in its entirety, along with the specific dollar amount settlements for each state and territory.

Forty-six states, the District of Columbia, and five territories (American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands) agreed to sign on to the tobacco settlement proposal which was released November 16, 1998, by an eight-member negotiating team of Attorneys General. Four states — Florida, Minnesota, Mississippi, and Texas — settled their cases earlier.

Participating manufacturers to the settlement are: Philip Morris Inc., R.J. Reynolds Tobacco Co., Brown & Williamson Tobacco Corp. and Lorillard Tobacco Co.

The Foundation

Anti-smoking advertising campaigns are extremely effective when they are long-term, and consistently portray smoking as hazardous for adults and children alike, according to an article in the Annals of Internal Medicine.

The Settlement:

- Requires the industry each year for ten years to pay $25 million to fund a charitable foundation which will support the study of programs to reduce teen smoking and substance abuse and the prevention of diseases associated with tobacco use.
- The foundation will:
  - Carry out a nationwide, sustained advertising and education program to counter youth tobacco use and educate consumers about the cause and prevention of diseases associated with tobacco use.
  - Develop, disseminate and test the effectiveness of counter advertising campaigns.
  - Commission studies, fund research and publish reports on factors that influence youth smoking and substance abuse.

  - Track and monitor youth smoking and substance abuse with a focus on reasons for increases or failures to decrease tobacco and substance use rates.
- Creates an industry-funded $1.45 billion national public education fund for tobacco control.
- The fund is established to carry out a nationwide sustained advertising and education program to counter youth tobacco use and educate consumers about tobacco-related diseases.

CARTOON CHARACTERS

[Tobacco] advertisements present images that appeal to children and youths and are seen and remembered by them. Concern has been expressed that while smoking may not have had an immediate effect on smoking uptake, they may increase susceptibility to smoking, which over time translates into behavior." — INSTITUTE OF MEDICINE.

THE SETTLEMENT:

- Bans use of cartoons in the advertising, promotion, packaging or labeling of tobacco products.

TARGETING YOUTH

"This young adult market, the 14-24 group. . ..represent(s) tomorrow's cigarette business. As this 14-24 age group matures, they will account for a key share of the total cigarette volume for at least the next 25 years." — PRESENTATION FROM C.A. TUCKER, VICE PRESIDENT OF MARKETING, TO THE BOARD OF DIRECTORS, RJR INDUSTRIES, SEPTEMBER 30, 1974.

THE SETTLEMENT:

- Prohibits targeting youth in advertising, promotions, or marketing.
- Bans industry actions aimed at initiating, maintaining or increasing youth smoking.
- Requires companies to:
  - Develop and regularly communicate corporate principles which commit to complying with the Master Settlement Agreement and reducing youth smoking.
  - Designate executive level manager to identify ways to reduce youth access and consumption of tobacco.
  - Encourage employees to identify additional methods to reduce youth access and youth consumption.

PUBLIC ACCESS TO DOCUMENTS AND COURT FILES

"The American people deserve to know the truth about the tobacco industry's marketing practices. . . ." — U.S. REP. THOMAS BLILEY.

THE SETTLEMENT:

- Requires tobacco companies to open, at their expense, a Website which includes all documents produced in state and other smoking and health related lawsuits.
- Requires the industry to maintain the site for ten years in a user-friendly and searchable format (requires an index and other features to improve searchable access).
- Requires the industry to add, at its expense, all documents produced in future civil actions involving smoking and health cases.

OUTDOOR ADVERTISING

"Tobacco companies spend more than $5 billion annually, or $13 million a day, on advertising and marketing campaigns." — FEDERAL TRADE COMMISSION.

THE SETTLEMENT:

- Bans all outdoor advertising, including: billboards, signs and placards in arenas, stadiums, shopping malls, and video game arcades.
- Limits advertising outside retail establishments to 14 square feet.
- Bans transit advertising of tobacco products.
- Allows states to substitute, for the duration of billboard lease periods, alternative advertising which discourages youth smoking.

TOBACCO MERCHANDISE

"Thirty percent of kids (12 to 17 years old), both smokers and nonsmokers, own at least one tobacco promotional item, such as T-shirts, backpacks, and CD players." — CAMPAIGN FOR TOBACCO-FREE KIDS.

THE SETTLEMENT:

- Beginning July 1, 1999, bans distribution and sale of apparel and merchandise with brand-name logos (caps, T-shirts, backpacks, etc.).

PRODUCT PLACEMENT AND SPONSORSHIPS

A document uncovered in the Minnesota case revealed how Phillip Morris provided products for use in movies as youth-oriented as "The Muppet Movie" and "Who Framed Roger Rabbit."

THE SETTLEMENT:

- Bans payments to promote tobacco products in movies, television shows, theater productions or live performances, live or recorded music performances, videos and video games.
- Prohibits brand name sponsorship of events with a significant youth audience or team sports (football, basketball, baseball, hockey or soccer).
- Prohibits sponsorship of events where the paid participants or contestants are underage.
- Limits tobacco companies to one brand name sponsorship per year (after current contracts expire or after three years—whichever comes first).
- Bans tobacco brand names for stadiums and arenas.

DISSOLUTION OF TOBACCO-RELATED ORGANIZATIONS

"The documents, considered as a whole, provide evidence that supports the state's assertions that defendants used CTR (Council for Tobacco Research) to mislead the public. . ." — HONORABLE GEORGE FINKLE, KING COUNTY SUPERIOR COURT JUDGE (WASHINGTON STATE).

THE SETTLEMENT:

- Disbands the Council for Tobacco Research, the Tobacco Institute, and the Council for Indoor Air Research.
- Requires all records of these organizations that relate to any lawsuit to be preserved.
- Provides regulation and oversight of new trade organizations

FINANCIAL RECOVERY FOR THE STATES

THE SETTLEMENT:

- Requires industry payments to the states in perpetuity, with the payments totaling $206 billion through the year 2025.
- Provides that distributions to states will be made based on formulas agreed to by Attorneys General.
- Requires annual payments by the industry to begin April 15, 2000.
- Provides that if all states participate in the settlement, annual payments will "ramp-up" beginning with a $4.5 billion payment on April 15, 2000. Ensuring April 15 payments will be at the following rates:

  - 2001: $5 billion
  - 2002-2003: $6.5 billion
  - 2004-2007: $8 billion
  - 2008-2017: $8.139 billion (plus $861 million to the strategic fund)
  - 2018 on: $9 billion
- Requires tobacco companies to make "up front" payments of nearly $13 billion in the following amounts: $2.4 billion in 1998, $2.472 billion on January 10, 2000, $2.546 billion in 2001, $2.622 billion in 2002, and $2.701 billion in 2003.
- Requires the companies, on April 15, 2008 and on April 15 each year through 2017, to pay $861 million into a strategic contribution fund.
  - Money from the fund will be allocated to states based on a strategic contribution formula developed by Attorneys General no later than June, 1999. The allocation formula will reflect the contribution made by states toward resolution of the state lawsuits against tobacco companies.

ENFORCEMENT

"At least 516 million packs of cigarettes per year are consumed by minors and at least half of those are illegally sold to minors." — INSTITUTE OF MEDICINE in its book GROWING UP TOBACCO FREE.

THE SETTLEMENT:

- Provides court jurisdiction for implementation and enforcement
- If the court issues an order enforcing the agreement and a party violates that order, the court may order monetary, civil contempt or criminal sanctions to enforce compliance with the enforcement order.
- Key public health provisions of the agreement are included in consent decrees to be filed in each state.
- Settling states or tobacco companies may apply to the court to enforce the terms of the consent decree.
- Allows settling state AGs access to company documents, records and personnel to enforce the agreement.
- On March 31, 1999, the industry is directed to pay $50 million which will be used to assist settling states in enforcing and imple-

menting the agreement and to investigate and litigate potential violations of state tobacco laws.

FREE SAMPLES

"Samples encourage experimentation by providing minors with a risk-free and cost-free way to satisfy their curiosity." — INSTITUTE OF MEDICINE.

THE SETTLEMENT:

- Free samples cannot be distributed except in a facility or enclosed area where the operator ensures no underage person is present.

GIFTS BASED ON PURCHASES

"[T]eens save Marlboro Miles and Camel Cash coupons in order to acquire other types of goods. . . . My brother gets Camel Cash. He's got stacks and stacks of them to get hats or whatever." — THE INSTITUTE OF MEDICINE in its book GROWING UP TOBACCO FREE.

THE SETTLEMENT:

- Bans gifts without proof of age.

LOBBYING

"Big tobacco spent $28.8 million in 1996 and $35.5 million in 1997 and employed 208 lobbyists to lobby Congress. That is one lobbyist for every 2.5 members of Congress."— PUBLIC CITIZEN.

THE SETTLEMENT:

- Tobacco companies are prohibited from opposing proposed state or local laws or administrative rules which are intended to limit youth access to and consumption of tobacco products.
- The industry must require its lobbyists to certify in writing they have reviewed and will fully comply with settlement terms including disclosure of financial contributions regarding lobbying activities and new corporate culture principles;
- Prohibits lobbyists from supporting or opposing state, federal, or local laws or actions without authorization of the companies.

PROHIBITION ON AGREEMENTS TO SUPPRESS RESEARCH

"Cigarettes kill more than 400,000 Americans every year. This figure represents more deaths than from AIDS, alcohol, car accidents, murders, suicides, drugs and fires—combined." —CAMPAIGN FOR TOBACCO-FREE KIDS.

THE SETTLEMENT:

- Prohibits manufacturers from jointly contracting or conspiring to:
    - Limit information about the health hazards from the use of their products;
    - Limit or suppress research into smoking and health; and
    - Limit or suppress research into the marketing or development of new products.
- Prohibits the industry from making any material misrepresentations regarding the health consequences of smoking.

MINIMUM PACK SIZE

"As the price of a pack of cigarettes continues to increase, more merchants (in minority, white, poor, and middle-class communities alike) may begin selling singles as a way to continue to make profits from adult and minor customers who can no longer afford an entire pack." — From a study by the PUBLIC HEALTH FOUNDATION.

THE SETTLEMENT:

- Limits minimum pack size to 20 cigarettes through December 31, 2001.
- Prohibits tobacco companies from opposing state legislation which bans the manufacture and sale of packs containing fewer than 20 cigarettes.

COST RECOVERY AND ATTORNEY FEES

THE SETTLEMENT:

- Requires the industry to reimburse states for costs, expenses and market rate for attorney fees.
- Requires the industry to pay for outside attorneys hired by the states.
    - Establishes two payment methods—liquidated fee agreement and arbitration.
    - Outside counsel can negotiate a liquidated fee agreement with the industry, and if accepted, would be paid from a $1.25 billion pool of money from the tobacco industry over four years.
    - If outside counsel rejects the liquidated fee process or cannot agree to an offer, they can go through arbitration.

- A three-member arbitration panel will be established with two permanent members and a member from the state represented by the outside counsel.

- The industry will pay whatever arbiters award, but timing of the payment will be subject to a $500-million-per-year cash flow cap.